

REMARKS

Claims 19-21 are presently pending. Claims 1-18 are cancelled without prejudice.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being obvious from the Mair reference. In rejecting claim 19, Examiner relies on Mair [0042], lines 4-6, [0033], lines 7-19, [0035], lines 7-16, [0042], and [0043].

“The 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions **if** the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph. that the ‘924 properly supports the subject matter (e.g.,) relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.” MPEP 2136.03

The fact that “the elements of the abstract of Mair’s Publication (2002/0186322 A1) are found in the proposal (which is the provisional application)” is simply not the proper standard for determining whether the “critical reference date of” Mair “is the filing date of the provisional application” for the purposes of prior art with regards to this application.

Assignee respectfully submits that the ‘924 Application does not properly support the subject matter relied upon to make the rejection. Thus, the 35 U.S.C. 102(e) critical date of Mair should not be the filing date of the ‘924 Application,

but rather the filing date of the utility application, which is October 15, 2001. Since the present application has a priority date August 17, 2001, Mair is not prior art under 35 U.S.C. 102(e).

Accordingly, Appellant respectfully requests withdrawal of the rejection to claim 19 and dependent claims 20 and 21.

CONCLUSION

For the foregoing reasons, all of the pending claims are distinguishable over the prior art of record. Reversal of the Examiner's rejection and issuance of a patent on the application are therefore requested.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,



Mirut P. Dalal
Registration No. 44,052
Attorney for Appellant

Dated: March 27, 2009

McANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, IL 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100